

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

COURT OF APPEALS
DISTRICT OF COLUMBIA
FILED

NOV 10 1920

Henry W. Hodges
Clerk

In the Court of Appeals
OF THE DISTRICT OF COLUMBIA.

No. 3442.

687

UNITED STATES EX REL. HORACE G.
ANDERSON, APPELLANT,

vs.

ABRAM SIMON ET AL., APPELLEES.

BRIEF FOR APPELLANT.

T. L. JEFFORDS,
JOHN H. WILSON,
Attorneys for Appellant.

In the Court of Appeals

OF THE DISTRICT OF COLUMBIA

No. 3442.

UNITED STATES EX REL. HORACE G.
ANDERSON, APPELLANT,

vs.

ABRAM SIMON ET AL., APPELLEES.

BRIEF FOR APPELLANT.

Statement of Case.

Relator was a teacher in public schools in Washington, D. C., from 1907 until 1917.

He started at \$800 salary and was promoted to \$1,800.

There was no real or legal charge against him, his so-called trial was unlawful, and his dismissal was a wrong he has a right to have corrected.

After being dismissed relator filed in the nature of an arrest of judgment a motion for rehearing and dismissal of the charge against him.

This motion was denied and he began this mandamus suit, and on his petition rule was issued, and school board made answer and issue was joined, but instead of proceeding to trial school board moved to dismiss relator's petition, and the court discharged said rule and dismissed said petition and assessed costs against relator, and so ended this cause in trial court.

From this judgment relator appealed.

Assignment of Errors.

1. The court erred in granting the motion of respondents to dismiss the petition for mandamus herein.
2. The court erred in not granting a mandamus herein.
3. The court erred in not permitting relator a trial herein.
4. The court erred in not requiring a trial herein.

ARGUMENT.

Dismissal of teachers by the school board is controlled by law of Congress and rules and regulations made in conformity and compliance therewith.

Mandamus in the District of Columbia is controlled by a statute specific in its terms as to procedure.

A school teacher claiming to be wrongfully dismissed and having made application to have the wrongful act corrected, has no avenue open to him for redress except by mandamus.

Kalbfus vs. Siddons, 42 App. D. C., 311.

26 En. Law and Procedure, 283, Sec. 7.

The trial of relator by the school board was a proceeding as by a quasi judicial body which is bound to follow strictly the law and rules and regulations for it made and provided.

Mandamus being a purely statutory proceeding, the court is bound to strictly follow its provisions.

No teacher shall be dismissed except after trial on written charges countersigned by superintendent of schools, and when on trial or being investigated shall have the right to be attended by counsel or a friend (Rec., p. 4).

Rules of school board provide:

“When charges have been originated or preferred against a teacher or other person in the

employ of the schools, and a trial or investigation is to be had thereon, the papers and data in the case shall be referred to the attorney and he be requested to prepare the complaint in due form for trial under sec. 10 of the act, approved June 20, 1906" (Rec., p. 3).

The so-called charge was not so countersigned and not so referred.

This charge is evident attempt to kiss a certain Gladys N. Jackson.

This is not in any proper sense a charge because "attempt to kiss" is modified by "evident," which is a mere matter of conclusion.

There is nothing in the charge to show who she is, or where the evident attempt to kiss took place, or that it was during school hours, or in a school house, or elsewhere within the jurisdiction of the school board. The charge was not transmitted in regular order as provided by rules of board (Rec., p. 4).

Before a teacher may be rightly tried there must be a charge, and the trial court and this court have passed on that question.

"Before the board has jurisdiction to proceed to the trial of a teacher there must be laid before the board a recommendation by the superintendent of schools which recommendation if it be for removal must in the very nature of things be based upon specific and adequate cause."

U. S. ex rel. Cardoza *vs.* School Board, 35 Wash. Law Rep., 15.

"These provisions show a clear intent to continue the teaching force by an indefinite tenure, so long as the work of the teacher is satisfactory—and until the teacher, unless she left voluntarily, should be removed upon the written recommenda-

tion of the superintendent of schools in accordance with sec. 2 of the act."

Blair *vs.* U. S. *ex rel.* Hellman, 45 D. C. App., 353.

But if the language of this so-called charge meant anything it does not become a charge until it is made so by being countersigned by superintendent of schools and by the act of the corporation counsel to prepare the complaint in due form for trial.

This is necessary to comply with the rules of the school board and give jurisdiction (Rec., pp. 3, 4-8).

To determine construction of a rule or regulation resort may be had to the interpretation put on it by those whose duty it is to apply it, and looking to the testimony of members of school board in a Senate Committee hearing we find as follows:

Quoting from Pamphlet No. 6, Hearing before Select Com. of the United States Senate, a Public Document, pursuant to Senate Res. 310, 66th Cong., page 506:

Q. Sen. Harrison. "Did you ever investigate the moral question as to Bruce?"

A. Dr. Johnson (Dr. Johnson, a member of the board now and also at the time of the alleged trial of relator). "When charges against the moral character are brought to the board, we look them over and send them to the corporation counsel, and we did so in this case, and received his opinion, which was given you by Mrs. Cook the other day."

Page 507. Dr. Johnson. "One man named Smith brought some charges there. A man named George E. Smith presented charges, signed by himself."

Sen. Harrison. "Did you investigate that?"

Dr. Johnson. "We referred that to the corporation counsel."

Sen. Harrison. "You did not investigate them, but referred them to the corporation counsel?"

Dr. Johnson. "Senator, the board must necessarily find out from its legal adviser whether or not charges presented to the board against a member or official of the school system are fitted for trial or not. If you go into every charge that is presented you will always be trying some one."

Sen. Harrison. "Do you think the board had the right, under the law, to exercise its own judgment, when matters were presented to it as to a question of morality, and investigate it without referring the matter to the corporation counsel?"

Dr. Johnson. "We can not investigate without a trial, according to the law."

Sen. Harrison. "Yes?"

Dr. Johnson. "We wanted to find out whether the charges were fit for trial before doing it."

Sen. Harrison. "And you thought the charges as to efficiency were worthy, but charges of his immorality were not worthy; is that right?"

Dr. Johnson. "Yes, until we got the opinion of the corporation counsel."

Page 510.

Sen. Harrison. "And you just took the advice of the corporation counsel on that question?"

Dr. Johnson. "Absolutely."

Sen. Harrison. "Do you think that is right?"

Dr. Johnson. "I do."

Pamphlet No. 5. Same Hearing, page 388. Re: Right to Dismiss Charlotte Hunter, a teacher.

Sen. Capper. "Is it a rule of the board that there shall be a public trial of any teacher charged with immoral delinquency?"

Mrs. Cook. "If charges are brought they are referred to the attorney for the board, to determine whether they contain sufficient grounds to warrant a trial. If he recommends a trial, the board institutes a trial."

Pamphlet No. 5. Same Hearing, page 316. Re: Right to Try Bruce on Charges of Immorality.

Mrs. Cook. "Mr. George C. Smith made inquiry whether in case of a trial teachers are to be immune. President Hamilton informed him that the matter will be placed in the hands of the cor-

poration counsel for the District of Columbia and will proceed along legal lines.

(The extracts from the minutes of the board of education, referred to by Mrs. Cook are, respectively, as follows:)

June 4, 1919: Mr. Hamilton announced to the board and to a large company of visitors present that two charges, duly signed by Mr. George Smith, alleging immoral, pedagogical, and administrative unfitness of Asst. Supt. R. C. Bruce, would promptly be placed with the corporation counsel for the District of Columbia for whatever action may be appropriate in the premises.

June 11, 1919: A large company had assembled in the board room, and the president addressed them by saying that the formal charges presented against Asst. Supt. R. C. Bruce were being considered by that official, and that when a report thereon had been returned the board would act in accordance with the recommendation made, uninfluenced by any public clamor.

June 30, 1919: President Hamilton announced that an opinion had been returned by the corporation counsel for the District of Columbia on the several charges against Asst. Supt. R. C. Bruce, said opinion being that no ground for legal action was found in the charges.

From these extracts of the hearing it appears that the school board itself has determined that there are no charges until and unless the corporation counsel says so.

Whenever in the law or in rules or regulations there seems want of guidance for procedure, it is well settled that resort be had to common law for a guide, and this so-called charge without being countersigned by the school superintendent and without being referred to corporation counsel and without his action is like an indictment without the signature of the foreman of the grand jury and without the signature of the prosecuting attorney.

It is not necessary to argue that indictment would be misnomer for such a paper, and a trial on it would be null and void.

Rules of school board provide:

Being investigated as mentioned in section 10, shall refer to an investigation made by the board, or a proper committee thereof, or by some officer or other person acting under "authority of the board or such committee."

The right of attendance of counsel and friend shall be construed to exist at the first stage of the investigation or trial at which the party involved is formally accused (Rec., p. 4).

Position of relator with its emoluments was one to which he had a right until properly taken away from him, and this should not be done—

"but by the judgment of his peers, or by the law of the land."

Andrews vs. King, 77 Maine, 224.

Kennedy vs. School Board, 82 Calif., 483.

Morley vs. Power, 73 Tenn., 691.

State vs. University, 5 Indiana, 77.

Darmstatter vs. City Council, 81 N. J. Law, 162.

49 L. R. A., New Series, footnote, p. 65.

People vs. Van Siclen, 43 Hun, 537.

Ex rel. *Kasschau vs. Police Commrs.*, 155 N. Y., 41.

The proof in this case is insufficient to justify the action of the school board, and it makes the situation no better to contend that it had the power to so act—that might makes right.

"There is no place in our constitutional system for the exercise of arbitrary power, and the courts have power to restore the status of parties aggrieved by the unwarranted action of a public official."

U. S. Ex rel. *Goldsby*, 211 U. S., 249.

The mandamus law of this jurisdiction provides that issues therein *shall* be tried by a jury, if etc., otherwise *shall* be heard and determined by the court.

The law also provides that if issues shall be joined the same *shall* stand for trial.

This law also provides that proceedings herein *shall* be had as in an action for false return.

This case having proceeded on the pleadings to joinder of issue the relator was entitled to a trial on the merits, and the school board having pleaded and issue joined, the motion to dismiss was too late and relator could not properly by such motion be deprived of his right to trial.

Relator was deprived of the right to poll the school board on its findings, and that was a substantial right.

Against his wishes and without his consent relator was deprived of a trial on the issues and now asks this court to reverse the trial court and restore to him his rights which the law gives him.

It is respectfully submitted that the trial court should be reversed.

T. L. JEFFORDS,
JOHN H. WILSON,
Attorneys for Appellant.

